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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,030	08/18/2004	Drew Bossen	71494-0004	9424
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MCGARRY BAIR PC 32 Market Ave. SW SUITE 500 GRAND RAPIDS, MI 49503			EXAMINER NGUYEN, HIEP VAN	
			ART UNIT 3686	PAPER NUMBER
			NOTIFICATION DATE 11/13/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@mcgarrybair.com

### Office Action Summary

**Application No.**

10/711,030

**Applicant(s)**

BOSSEN ET AL.

**Examiner**

HIEP NGUYEN

**Art Unit**

3686

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16, 18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 08/31/2009

### **DETAILED ACTION**

1. Claims 1-16, 18, 20-21 have been examined. Claims 1, 2, 4, 14, 18 and 20 have been amended. Claims 17 and 19 have been canceled. No new matter has been added.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 14-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Claims 14-16 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. In particular, claims 14-16 are hybrid claims. See MPEP §2173.05(p) II. For a discussion of this rejection, see the 35 U.S.C. §112 2<sup>nd</sup> paragraph rejection below.

#### ***Claim Rejections - 35 USC § 112***

5. Claim 14 are indefinite because they are considered hybrid claims. See MPEP §2173.05(p) II. In particular, because claim 14 recites both a system for improving the

ergonomics and method for providing at least one indicium..., storing data... that system, the claim does not apprise a person of ordinary skill in the art of its scope. Additionally, the claims are directed to neither a "process" or a "machine" but rather embrace or overlap two different statutory classes of invention as set forth in 35 U.S.C. §101.

For example, claim 14 recites "a survey of input data" In light of this evidence, one of ordinary skill in the art could reasonably interpret these recitations as express intent by Applicant(s) to claim a product claim or system Claim. Alternatively, claim 14 also recites the method steps of "providing at least one indicium..., storing data representative... (emphasis added)." One of ordinary skill in the art could also reasonably interpret these recitations as express intent by Applicant(s) to include method steps. In light of this conflicting evidence, the scope of the claims is not known. Additionally, a person of ordinary skill in the art could reasonably interpret claim 14 to be drawn to both a product or process.

Therefore in accordance with §2173.05(p) II. which states that a single claim must be drawn to either a product or process (but not both) and because a potential competitor of Applicant(s) would not know whether *possession alone* of the claimed structure constituted infringement, or alternatively, if infringement required the *execution* of the recited method steps, the claims are indefinite. If Applicant(s) overcome this particular 35 U.S.C. §112, 2<sup>nd</sup> paragraph rejection, the related 35 U.S.C. §101 rejection

will also be withdrawn. For prior art purposes, the Examiner will interpret claims 14-16 as claims directed to a product (system) only.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US. 6,931,387) in view of Salem (US. 3,788,695).

8. With respect to Claim 1, Wong et al. teaches a method for improving ergonomics for an individual in a workplace, the workplace comprising at least one item having at least one physically adjustable parameter ('387; col./line 6/57-7/15) adjustable through a range of motion ('387; Col. 8, lines 23-46), the method comprising the steps of:

Wong et al. does not disclose applying at least one indicium to the at least one item substantially along the range of motion for visually indicating a range of fit settings for the at least one physically adjustable parameter; adjusting the at least one physically adjustable parameter of the at least one item to at least one ergonomically correct fit

setting within the range of fit settings indicated by the at least one indicium that locates the at least one physically adjustable parameter in a desired position for a particular individual; and storing, in a medium readable by at least one of a machine and a user, data representative of the at least one ergonomically correct fit setting indicated by the at least one indicium associated with the particular individual.

Salem discloses applying at least one indicium to the at least one item substantially along the range of motion for visually indicating a range of fit settings for the at least one physically adjustable parameter; adjusting the at least one physically adjustable parameter of the at least one item to at least one ergonomically correct fit setting within the range of fit settings indicated by the at least one indicium that locates the at least one physically adjustable parameter in a desired position for a particular individual ('695; Col. 3, lines 1-35; Col./Line 5/45-6/13)

Therefore it would have been obvious to one of ordinary skilled in the art at the time of invention was made to include in the ergonomic assessment system of Wong et al. the therapeutic device or appliance with vertical adjustment ('695; Abstract)) as taught by Salem and the combination would have yielded predictable results.

Wong et al. discloses further storing, in a medium readable by at least one of a machine and a user, data representative of the at least one ergonomically correct fit setting indicated by the at least one indicium associated with the particular individual ('387; Col. 9, lines 19-50; Col. /line 10/47-11/12).

9. With respect to Claim 2, the combined art teaches the method according to claim 1 and Wong et al. discloses further comprising the step of auditing the individual to determine whether a present location of the at least one physically adjustable parameter complies with the at least one ergonomically correct fit setting for a current user of the at least one item ('387; Col./line 6/57-7/15).

10. With respect to Claim 3, the combined art teaches the method according to claim 1, Wong et al. discloses further comprising the step of monitoring the individual to determine whether the individual is a high risk individual ('387; Col./line 2/63-3/5.)

11. With respect to Claim 4, the combined art teaches the method according to claim 21, Wong et al. discloses wherein the comfort level is determined by at least one of presence of discomfort, location of discomfort, intensity of discomfort, and frequency of discomfort (387; Col. 8, lines 16-22; Col. 9, lines 5-10).

12. With respect to Claim 5, the combined art teaches the method according to claim 1 and Wong et al. discloses further comprising the step of providing to the individual a record of the at least one ergonomically correct fit setting and instructions for adjusting the at least one physically adjustable parameter to achieve the at least one ergonomically correct fit setting ('387; col. 9-21; Figs 4 and 7).

13. With respect to Claim 6, the combined art teaches the method according to claim 1, Wong et al. discloses wherein the workplace is a traditional office workplace ('387; Col. 7, lines 2-8).

14. With respect to Claim 14, Wong et al. teaches a system for improving the ergonomics for an individual in a workplace, the workplace comprising at least one item having at least one physically adjustable parameter ('387; col./line 6/57-7/15) adjustable through a range of motion, the system comprising:  
a survey of input data ('387; col. 10, lines 47-63) comprising at least one of: (1) physical characteristics of the individual ('387; col./line 6/57-7/15) , (2) characteristics of at least one task performed by the individual ('387; See Figs. 4 and 7), and (3) characteristics of at least one environmental feature of the workplace, wherein the survey is conducted through the Internet ('387; Col. 5, lines 19-47).

Wong et al. does not disclose a determination of at least one preferred setting for the at least one physically adjustable parameter substantially along the range of motion of the at least one item in the workplace based at least in part upon the input data collected in the survey;

providing at least one indicium on the at least one item for indicating a setting of the at least one physically adjustable parameter along the range of motion



an adjustment of the at least one physically adjustable parameter of the at least one item to the preferred setting based upon the results of the determination; and

storing, in a medium readable by at least one of a machine and a user, data representative of the at least one preferred setting indicated by the at least one indicium associated with the particular individual.

Salem discloses a determination of at least one preferred setting for the at least one physically adjustable parameter of the at least one item in the workplace based at least in part upon the input data collected in the survey; and an adjustment of the at least one physically adjustable parameter of the at least one item to the preferred setting based upon the results of the determination ('695; Col. 3, lines 1-35; Col./Line 5/45-6/13)..

Therefore it would have been obvious to one of ordinary skilled in the art at the time of invention was made to include in the ergonomic assessment system of Wong et al. the therapeutic device or appliance with vertical adjustment ('695; Abstract)) as taught by Salem and the combination would have yielded predictable results.

Wong et al. discloses further storing, in a medium readable by at least one of a machine and a user, data representative of the at least one ergonomically correct fit

setting indicated by the at least one indicium associated with the particular individual ('387; Col. 9, lines 19-50; Col. /line 10/47-11/12).

15. With respect to Claim 15, the combined art teaches the system according to claim 14, Wong et al. discloses wherein the determination further comprises a recommendation of a new or replacement item for the at least one item in the workplace ('387; Col. 11, lines. 32-55: product recommendation).

16. With respect to Claim 16, the combined art does not disclose, according to claim 14, wherein the workplace is a school. However, the recitation "the workplace is a school" is intended use and is not given weight.

17. Claim 18 is rejected as the same reason with Claim 14.

18. With respect to Claim 20, the combined art teaches the method according to claim 18, Salem discloses wherein the at least one item comprises at least one of a seat and a table, and the at least one physically adjustable parameter comprises at least one of a seat height and a table height ('695; Col. 3, lines 25-35).

19. With respect to Claim 21, the combined art teaches the method of claim 1 and, wong et al. discloses further comprising the step of transforming information

representative of a comfort level of the individual into data, and making adjustments to the physically adjustable parameter of the at least one item in response to the transformed information ('387; Col. 8, lines 3-22: the Examiner interprets the selection of a suitable range of motion conducted by various body to make a comfort level of an individual; and reads on depicting the type of lift, including an inquiry into the weight of the item and the distance from the body of the item lifted as in a form of physical adjustable parameters).

20. Claims 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (US. 6,931,387) in view of Salem (US.3,788,695) and further in view of Mantovani et al. (US 5,918,693).

21. With respect to Claim 7, the combined art does not disclose, according to claim 1, wherein the workplace is a vehicle.

Mantovani et al. discloses wherein the workplace is a vehicle and wherein the workplace is a tractor cabin of a tractor trailer ('693; Abstract).

Therefore it would have been obvious to one of ordinary skilled in the art at the time of invention was made to Combine in the ergonomic assessment system and physical adjustable parameter of Wong et al./ Gordon and the industrial truck's adjustment of height requirement as taught by Mantovani.

22. With respect to Claims 8, 9, 10, 11, 12 and 13 the combined art does not disclose, wherein the workplace is a tractor cabin, wherein the at least one item comprises a steering column assembly, wherein the at least one physically adjustable parameter comprises at least one of a steering column depth and a steering column tilt, wherein the at least one physically adjustable parameter comprises at least one of the following: a seat assembly height, a seat back tilt, a seat rearward tilt, a seat forward tilt, a seat size, a seat assembly depth, and a seat back support levels, and wherein the seat assembly further comprises an armrest, and the at least one physically adjustable parameter comprises at least one of an armrest tilt and an armrest height.

23. However, the recitations of back seat, steering columns, armrest merely are non functional descriptive and are not given weight.

***Response to Amendment/Arguments***

24. Applicant's arguments filed 08/31/2009 have been fully considered but they are not persuasive.

25. In the Remarks filed 08/31/2009, the Applicant argued that the teachings of Wong et al. do not disclose applying and providing indicium to an item along the range of motion of the at least one physically adjustable parameter for visually indicating a range of fit settings for the at least one physically adjustable parameter and adjusting

the physically adjustable parameter to an ergonomically correct fit setting in amended claims 1, 14 and 18.

26. In response to the Applicant's argument, the Examiner respectfully disagrees the inaction on the part of indicia for visually indicating fit settings and storing data representative of the settings. In fact, as per amended claims 1, 14 and 18, Salem discloses the incorporation of adjustability in height from sitting to a standing position for children from 40 to 50 inches in height. It also adjusts in depth and width in order to insure individual fit of the child and to provide correct sitting and standing position ('695; Col. 4, lines 1-13).

Therefore, given the broadest reasonable interpretation to one of ordinary skill in the art, it is respectfully submitted that the incorporation of adjustability in height , in depth and width in order to insure individual fit is a form of indicia for visually indicating fit settings and storing data representative of the settings as described in amended Claims 1, 14, and 18 in the Applicants' invention.

27. Therefore, the Examiner maintains the rejection to Applicants' claims.

### ***Conclusion***

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

29. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HIEP NGUYEN whose telephone number is (571) 270-5211. The examiner can normally be reached on Monday through Friday 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Application: 10/711,030

Paper No. 20091021

Art Unit: 3686

Page 14

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/H. N./

Examiner, Art Unit 3686

November 5, 2009

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686